

United States Bankruptcy Court
District Of Massachusetts
Eastern Division

In Re:)
Shawn Lynch, and) Case No. 13-16018 FJB
Gina Lynch.)
Debtors) Chapter: 13
)
)

DEBTORS' MOTION TO AVOID AND CANCEL JUDICIAL LIEN ON RESIDENTIAL REAL ESTATE

Now come, Shawn Lynch and Gina Lynch, Debtors in the above captioned matter and requests that this honorable court enter an order a avoiding a judicial lien held on residential real-estate held by Equable Ascent Financial LLC f/k/a Hilco Receivables LLC (herein after “Equable”) under 11 U.S.C. § 522(f). In support thereof, the Debtors state as follows:

1. The Debtors commenced this case on October 14, 2013 by filing a voluntary petition for relief under chapter 13 of the Code.
2. The section 341 meeting was held as scheduled on November 20, 2013.
3. The deadline for objecting to claimed exemptions is 30 days from the conclusion of the Meeting of Creditors and has expired and no objection has been filed.

Equable

4. Pursuant to MLBR 40003-1(a)(1) the holder if the judicial lien to be removed is:

Equable Ascent
1120 W Lake Cook Road, Suite B
Buffalo Grove, IL 60089-1970

5. Pursuant to MLBR 40003-1(a)(2) Equable recorded a judicial lien against Debtors’ residence by virtue of the attached Execution granted by the Framingham District

Court on December 27, 2011 and recorded on January 24, 2012 with the **Middlesex County Registry of Deeds in Book 58339 Page 417**. See Exhibit 1.

6. Pursuant to MLBR 40003-1(a)(3) the amount of the lien at the time of filing was \$5,975.20 plus interest.
7. Pursuant to MLBR 40003-1(a)(4) and (5): Other lien holders on the property and the total amount of the liens:

First in Priority:

Nation Star

Amount: \$259,712.00

Second in Priority:

BSI Financial Serves

Amount: \$49,455.00

Third in Priority: **(lien being removed)**

Equable

Amount: \$5,975.20 plus interest

8. Pursuant to MLBR 40003-1(a)(5): Total amount of liens on the property other than the lien being avoided: **\$309,167.00**
9. Pursuant to MLBR 40003-1(a)(6): Exemption being impaired, Amount: \$22,000.00 pursuant to 11 USC §522 (d)(1).
10. Pursuant to MLBR 40003-1(a)(7): Debtor owns real property located 22 Webster Drive, Holliston Massachusetts. Said property is valued at \$237,700. See Exhibit 2.
11. Pursuant to MLBR 40003-1(a)(8): Application of section 522 (f)(2)(a)¹ formula:

¹ 522(f)(2)(a) "(A) For the purposes of this subsection, a lien shall be considered to impair an exemption to the extent that the sum of--

(i) the lien;
(ii) all other liens on the property; and
(iii) the amount of the exemption that the debtor could claim if there were no liens on the property; exceeds the value that the debtor's interest in the property would have in the absence of any liens."

The Lien, 522 (f)(2)(A)(i):	\$5,975.20 plus interest
All other Liens, 522 (f)(2)(A)(ii)	\$309,167.00
Exemption, 522 (f)(2)(A)(iii)	\$22,000.00

12. As such, pursuant to Pursuant to MLBR 40003-1(a)(8) and section 522 (f)(2)(a) the lien being avoided “exceeds the value that the debtor’s interest in the property would have in the absence of the lien.”
13. Pursuant to MLBR 40003-1(a)(9): Debtor states that the entire lien is avoidable.
14. Pursuant to MLBR 40003-1(a)(10): Attached as exhibit 3 is the debtor’s valuation of the subject property.

WHEREFORE, Debtor respectfully requests that this Honorable Court:

- a) Avoid and Cancel the lien of Equable Ascent Financial LLC f/k/a Hilco Receivables LLC in its entirety, that being for the sum of \$5,975.20 plus interest; and
- b) Grant such other and further relief as just and proper.

Date: January 12, 2014

Respectfully submitted,

Shawn Lynch and Gina Lynch

Though their Attorney,

/s/ Robert W. Kovacs, Jr.

Robert W. Kovacs, Jr.

BBO# 671497

Law Office of Robert W. Kovacs, Jr.

172 Shrewsbury Street

Worcester, MA 01604

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(508) 926 - 8833

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Certificate of Service

I hereby certify that on January 12, 2014, I electronically served the above

- DEBTORS' MOTION TO AVOID AND CANCEL JUDICIAL LIEN ON RESIDENTIAL REAL ESTATE

via the CM/ECF System of the United States Bankruptcy Court for the District of Massachusetts upon the

- United States Trustee
- Standing Trustee
- Carl Aframe for Barbara Lynch
- Jason Giguere and Richard T. Mulligan for Nationstar Mortgage LLC
- Timothy Larson for Ocwen Loan Servicing, LLC

Manual Notice List

I further certify that I, served a copy of the same by first class mail, postage prepaid, on the non CM/ECF participants listed below:

Equable Ascent
1120 W Lake Cook Road, Suite B
Buffalo Grove, IL 60089-1970

Equable Ascent Fincial For Chase
1120 W Lake Cook Road, Suite B
Buffalo Grove, IL 60089-1970

Law Office Of Gary Kreppel
33 Boston Post Road, West
Suite 590
Marlborough, MA 01752

EQUABLE ASCENT FINANCIAL, LLC
CORPORATION SERVICE COMPANY, Registered Agent
84 State Street
Boston, MA 02109

STEPHEN AUBURN, Manager
EQUABLE ASCENT FINANCIAL, LLC
1120 WEST LAKE COOK RD., STE B
BUFFALO GROVE, IL 60089

Shawn Lynch
Gina Lynch
22 Webster Drive
Holliston, MA 01746

Dated: January 12, 2014

Respectfully submitted,

/s/ Robert W. Kovacs, Jr.

United States Bankruptcy Court
District Of Massachusetts
Eastern Division

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)
)

ORDER AVOIDING LIEN

AND NOW, this _____ day of _____, 2014 upon the
Debtors' Motion to Avoid and Cancel Judicial Liens on Residential Real Estate which
impairs an exemption of the Debtors.

It is hereby ORDERED AND DECREED that

(1) The judicial lien held by Equable Ascent Financial LLC f/k/a Hilco Receivables
LLC in and on, the Debtors', Shawn Lynch and Gina Lynch's, residential real
estate located at 22 Webster Drive, Holliston Massachusetts and recorded at the
Middlesex County Registry of Deeds at **book 58339 page 417** be and hereby is
canceled and void.

(2) _____

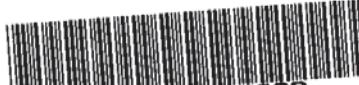
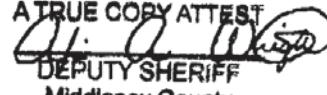
BY THE COURT:

Date: _____

United States Bankruptcy Judge

EXHIBIT 1

120020079
 248361

EXECUTION ON MONEY JUDGMENT		DOCKET NUMBER 1149CV000893	Trial Court of Massachusetts District Court Department
CASE NAME Equable Ascent Financial LLC f/k/a Hilco Receivables LLC vs. Shawn R. Lynch Sr			
JUDGMENT DEBTOR AGAINST WHOM EXECUTION IS ISSUED Shawn R Lynch, Sr A/K/A Shawn R Lynch 22 Webster Drive Holliston, MA 01746		COURT NAME & ADDRESS Framingham District Court 600 Concord Street Framingham, MA 01702	
 2012 00014699 Bk: 58339 Pg: 417 Doc: EXEC Page: 1 of 2 01/24/2012 10:44 AM		JUDGMENT CREDITOR(S) IN WHOSE FAVOR EXECUTION IS ISSUED Equable Ascent Financial LLC f/k/a Hilco Receivables LLC	
JUDGMENT CREDITOR (OR CREDITOR'S ATTORNEY) WHO MUST ARRANGE SERVICE OF EXECUTION Gary Howard Kreppel Esq. Law Office of Gary H. Kreppel P.C. 33 Boston Post Road West Suite 590 Marlborough, MA 01752		FURTHER ORDERS OF THE COURT  A TRUE COPY ATTEST DEPUTY SHERIFF Middlesex County	
TO THE SHERIFFS OF THE SEVERAL COUNTIES OR THEIR DEPUTIES, OR (SUBJECT TO THE LIMITATIONS OF G.L. C. 41 § 92) ANY CONSTABLE OF ANY CITY OR TOWN WITHIN THE COMMONWEALTH:			
The judgment creditor(s) has recovered judgment against the judgment debtor named above in the amount shown below:			
WE COMMAND YOU , therefore, from out of the value of any real or personal property of such judgment debtor found within your territorial jurisdiction, to cause payment to be made to the judgment creditor(s) in the amount of the "Execution Total" shown below, plus additional postjudgment interest as provided by G.L. c. 235 § 8 on the "Judgment Total" shown below commencing from the "Date Execution Issued" shown below at the "Annual Postjudgment Interest Rate" shown below, and to collect your own fees, as provided by law. This Writ of Execution is valid for twenty years from the "Date Judgment Entered" shown below. It must be returned to the court, along with your return of service, within ten days after this judgment has been satisfied or discharged, or after twenty years if this judgment remains unsatisfied or undischarged.			
1. Judgment Total		5,936.14	
2. Date Judgment Entered		12/07/2011	
3. Date Execution Issued		12/27/2011	
4. Number of Days from Judgment to Execution (Line 3 - Line 2)		20	
5. Annual Postjudgment Interest Rate		.12	
6. Postjudgment Interest from Judgment to Execution (Lines 1x4x5)		\$39.06	
7. Postjudgment Costs (if any)		\$	
8. Credits (if any)		\$	
9. EXECUTION TOTAL (Lines 1 + 6 + 7, minus Line 8)		\$5,975.20	
LEVYING OFFICER: (a) Add daily interest from date execution issued.			
(b) Add your fees as provided by law:			
TESTE OF FIRST JUSTICE WITNESS: Hon. Robert V Greco	DATE EXECUTION ISSUED 12/27/2011	CLERK-MAGISTRATE/ASST. CLERK	

Ronald A. Greco

MIDDLESEX SS.,

January 24, 2012

By virtue of this execution, which has been placed in my hands for the purpose of taking lands of the within-named judgment debtor(s), SHAWN R. LYNCH, SR. AKA SHAWN R. LYNCH, I this day at Nine o'clock and no minutes a.m., seized and took all the right, title and interest (not exempt by law from attachment or levy on execution) which the within-named, SHAWN R. LYNCH, SR. AKA SHAWN R. LYNCH, has in and to the following described real estate, to wit:

22 WEBSTER DRIVE, HOLLISTON, MIDDLESEX COUNTY

The land with the buildings thereon, situated in Holliston, Middlesex County, Massachusetts, on the Southeasterly side of Webster Drive and being shown as Lot No. 30 on the plan hereinafter referred to, bounded and described as follows:

NORTHWESTERLY	by the Southeasterly side line of Webster Drive one Hundred (100) feet;
SOUTHWESTERLY	by Lot No. 29 as shown on said plan, two hundred three (203) feet;
SOTHEASTERLY	by part of Lot No. 36 and Lot No. 35 as shown on said plan, one hundred eleven and 29/100 (111.29) feet; and
NORTHEASTERLY	by Lot No. 32 and Lot No. 31 as shown on said plan, two hundred four and 45/100 (204.45) feet.

Containing 21,500 square feet of land.

All of said boundaries are shown on a plan entitled, "Plan of Highland Acres, a Subdivision in Holliston, November 25, 1957, Schofield Brothers, Registered Civil Engineers, Framingham Mass." recorded with Middlesex South District Registry of Deeds as Plan No. 238 of 1958 at the end of Book 9112.

Together with the right to use all streets and ways shown on said plan, for all purposes for which streets and ways are commonly used in the Town of Holliston, in common with all others lawfully entitled thereto.

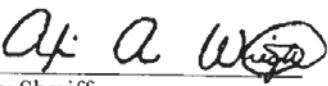
Said premises are conveyed subject to restrictions of record.

Being the same premises conveyed to the Grantors by Deed of John F. McCarthy and Barbara A. McCarthy dated October 26, 1976, recorded in Book 13082, Page 440.

And I levied this execution thereupon.

And immediately afterward I suspended the further levy on this execution upon the above described real estate by written request of the attorney for the within-named judgment creditor.

GARY H. KREPPEL, P.C.
33 BOSTON POST ROAD WEST
SUITE 590
MARLBOROUGH, MA 01752



Deputy Sheriff

EXHIBIT 2



August 7, 2013

Shawn Lynch
22 Webster Drive
Holliston, MA 01746

RE: Property located at 22 Webster Drive, Holliston, MA 017467

Dear Shawn,

The subject property is a Ranch style home consisting of 960 sq. ft. of living space. There are 5 rooms featuring 3 bedrooms, an eat-in kitchen, living room and 1 full bath. A 1-car garage and 3-season sunroom are off the side and back of the home as well as a back deck from the kitchen area. The basement is full with a bulkhead leading to the backyard.

The home is in average condition with some updates having been done, but more work is needed. It is located in a neighborhood and has a nice level lot consisting of 21,344 sq. ft.

The Town assessment for fiscal year 2013 is \$237,700. Taxes are approximately \$4,426.00. It is more fully described at the Middlesex Registry of Deeds Book 47238, Page 476.

Based upon sales of comparable properties in the area, it is my professional opinion that the Fair Market Value as of today is \$250,000.

If you have any questions regarding this information, please don't hesitate to call.

Sincerely

Lynn Rossini
Broker Associate

RE/MAX Executive Realty
404 Washington Street
Holliston, MA 01746
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Fax: 508-429-2449
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